

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

JEROME B. REED,	:	
	:	
Plaintiff,	:	
	:	
v.	:	Civ. No. 23-155-CFC
	:	
BOB BENOIR,	:	
	:	
Defendant.	:	

Jerome B. Reed, James T. Vaughn Correctional Center, Smyrna, Delaware. Pro Se Plaintiff.

MEMORANDUM OPINION

October 30, 2023
Wilmington, Delaware


CONNOLLY, Chief Judge:

I. INTRODUCTION

In February 2023, Plaintiff Jerome B. Reed, an inmate confined at James T. Vaughn Correctional Center (JTVCC) in Smyrna, Delaware, filed this action pursuant to 42 U.S.C. § 1983. (D.I. 1) Plaintiff appears *pro se* and has been granted leave to proceed in forma pauperis. (D.I. 6) Pending is Plaintiff's request for appointed counsel and to amend the case caption. (D.I. 8) The Court proceeds to review and screen the Complaint pursuant to 28 U.S.C. § 1915(e)(2)(b) and § 1915A(a).

Plaintiff alleges that Defendant, who was employed as a nurse at JTVCC, sexually assaulted him in 2014.

II. LEGAL STANDARDS

A federal court may properly dismiss an action *sua sponte* under the screening provisions of 28 U.S.C. § 1915(e)(2)(B) if “the action is frivolous or malicious, fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief.” *Ball v. Famiglio*, 726 F.3d 448, 452 (3d Cir. 2013) (quotation marks omitted); *see also* 28 U.S.C. § 1915(e)(2) (*in forma pauperis* actions); 28 U.S.C. § 1915A (civil actions filed by prisoners seeking redress from governmental entities or government officers and employees). The Court must accept all factual allegations in a

complaint as true and view them in the light most favorable to a pro se plaintiff. *See Phillips v. County of Allegheny*, 515 F.3d 224, 229 (3d Cir. 2008). Because Plaintiff proceeds *pro se*, his pleading is liberally construed and his Complaint, “however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers.” *Erickson v. Pardus*, 551 U.S. 89, 94 (2007).

A complaint is not automatically frivolous because it fails to state a claim. *See Dooley v. Wetzel*, 957 F.3d 366, 374 (3d Cir. 2020). Rather, a claim is deemed frivolous only where it relies on an “‘indisputably meritless legal theory’ or a ‘clearly baseless’ or ‘fantastic or delusional’ factual scenario.’” *Id.*

The legal standard for dismissing a complaint for failure to state a claim pursuant to § 1915(e)(2)(B)(ii) and § 1915A(b)(1) is identical to the legal standard used when ruling on Rule 12(b)(6) motions. *Tourscher v. McCullough*, 184 F.3d 236, 240 (3d Cir. 1999). Before dismissing a complaint or claims for failure to state a claim upon which relief may be granted pursuant to the screening provisions of 28 U.S.C. §§ 1915 and 1915A, however, the Court must grant Plaintiff leave to amend his complaint unless amendment would be inequitable or futile. *See Grayson v. Mayview State Hosp.*, 293 F.3d 103, 114 (3d Cir. 2002).

A well-pleaded complaint must contain more than mere labels and conclusions. *See Ashcroft v. Iqbal*, 556 U.S. 662 (2009); *Bell Atl. Corp. v.*

Twombly, 550 U.S. 544 (2007). A plaintiff must plead facts sufficient to show that a claim has substantive plausibility. *See Johnson v. City of Shelby*, 574 U.S. 10, 12 (2014) (per curiam). A complaint may not be dismissed, however, for imperfect statements of the legal theory supporting the claim asserted. *See id.* at 11.

A court reviewing the sufficiency of a complaint must take three steps: (1) take note of the elements the plaintiff must plead to state a claim; (2) identify allegations that, because they are no more than conclusions, are not entitled to the assumption of truth; and (3) when there are well-pleaded factual allegations, assume their veracity and then determine whether they plausibly give rise to an entitlement to relief. *Connelly v. Lane Constr. Corp.*, 809 F.3d 780, 787 (3d Cir. 2016). Elements are sufficiently alleged when the facts in the complaint “show” entitlement to relief. *Iqbal*, 556 U.S. at 679 (quoting Fed. R. Civ. P. 8(a)(2)). Deciding whether a claim is plausible will be a “context-specific task that requires the reviewing court to draw on its judicial experience and common sense.” *Id.*

III. DISCUSSION

Plaintiff’s claims are time-barred. For purposes of the statute of limitations, § 1983 claims are characterized as personal injury actions. *Wilson v. Garcia*, 471 U.S. 261, 275 (1985). In Delaware, § 1983 claims are subject to a two-year limitations period. *See* 10 Del. C. § 8119; *Johnson v. Cullen*, 925 F. Supp. 244,

248 (D. Del. 1996). Section 1983 claims accrue “when the plaintiff knew or should have known of the injury upon which its action is based.” *Sameric Corp. v. Philadelphia*, 142 F.3d 582, 599 (3d Cir. 1998).

The statute of limitations is an affirmative defense that generally must be raised by the defendant, and it is waived if not properly raised. *See Benak ex rel. Alliance Premier Growth Fund v. Alliance Capital Mgmt. L.P.*, 435 F.3d 396, 400 n.14 (3d Cir. 2006); *Fassett v. Delta Kappa Epsilon*, 807 F.2d 1150, 1167 (3d Cir. 1986). “Although the statute of limitations is an affirmative defense, *sua sponte* dismissal is appropriate when ‘the defense is obvious from the face of the complaint and no further factual record is required to be developed.’” *Davis v. Gauby*, 408 F. App’x 524, 526 (3d Cir. 2010) (quoting *Fogle v. Pierson*, 435 F.3d 1252, 1258 (10th Cir. 2006)). Here, it is obvious from the face of the February 2023 Complaint that Plaintiff’s claims regarding an alleged 2014 sexual assault are time-barred. Accordingly, the Complaint will be dismissed *sua sponte* under § 1915(e)(2)(B)(ii) and § 1915A(b)(1). Amendment is futile.

IV. CONCLUSION

For the above reasons, the Court will: (1) dismiss the Complaint for failure to state claims upon which relief can be granted pursuant to 28 U.S.C.

§§ 1915(e)(2)(B)(ii) and 1915A(b)(1), and (2) deny as moot Plaintiff's request for appointed counsel and to amend the case caption (D.I. 8).

The Court will issue an Order consistent with this Memorandum Opinion.